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<b>D.C., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 10-986</b>
	)	<b>Issued: January 3, 2011</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Atlanta, GA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On February 23, 2010 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 12, 2010. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Appellant, a 40-year-old mail clerk, filed a Form CA-2 claim for benefits on June 8, 2009, alleging that she developed an emotional condition causally related to factors of employment. She indicated on the form that she experienced stress because management unfairly denied her request for 152 hours of leave without pay (LWOP) from May 28 to June 22, 2009. Appellant stated that George Sconyers, her plant manager, told her that the medical documentation she provided was not sufficient to support her request. She asserted that

he failed to specify the reasons this medical evidence was not sufficient. Appellant subsequently returned to her physician, who updated her information and added that she was incapacitated for the period in question.

In a report dated May 27, 2009, received by the Office on July 6, 2009, Raymond Hoobla, Ph.D., in psychology, indicated that appellant was unable to work as of May 27, 2009.

Appellant submitted a June 3, 2009 letter from Mr. Sconyers, received by the Office on July 6, 2009, in which he denied her request for 152 hours of LWOP from May 28 to June 22, 2009. Mr. Sconyers indicated that her medical documentation failed to provide an explanation of the nature of her illness or injury sufficient to establish that she was unable to perform her normal duties for the stated period. He further stated that she failed to qualify for LWOP under both the Family Medical Leave Act (FMLA) and management's 1250-hour work requirement.

In a report dated June 8, 2009, Dr. Hoobla stated that he treated appellant on that date and opined that she was incapacitated from working. He advised that she would be able to resume work on June 22, 2009.

By letter dated June 8, 2009, appellant asked her union representative to file a grievance against management on her behalf due to its denial of her request for LWOP during the stated period. She indicated that management's actions were causing her additional, undue stress.

In a report dated June 29, 2009, Paulette M. Jarmon-Thomas, a licensed professional counselor, related that appellant had been ill since May 25, 2009. She stated that appellant was currently enrolled in a five-week intensive outpatient program which met four times per week and was unable to work. Ms. Jarmon-Thomas advised that appellant could resume work on August 3, 2009 without restrictions. In a report dated July 8, 2007, she diagnosed anxiety disorder and major depression. Ms. Jarmon-Thomas stated that appellant was experiencing restlessness, edginess, fatigue, difficulty concentrating, irritability, sleep disturbance, an inability to manage her anger, lack of appetite, headaches and crying spells.

By letter dated July 11, 2007, the Office advised appellant that she needed to submit additional factual and medical information in support of her claim. It asked her to describe in detail the employment-related conditions or incidents which she believed contributed to her emotional condition, and to provide specific descriptions of all practices, incidents, etc., which she believed affected her condition. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her stress-related condition, and an opinion as to whether her claimed emotional condition was causally related to her federal employment. It requested that she submit the additional evidence within 30 days.

In a letter dated July 17, 2008, appellant stated that the employing establishment caused her stress by failing to approve or respond to her requests for leave and to her physician's recommendations in a timely manner. She asserted that this conduct on the part of management constituted a form of harassment.

In a July 30, 2009 letter, appellant's attendance supervisor, Toni Taylor-Pope, controverted the claim. She stated:

"[Appellant] performed her duties as required when she reported to work. She had no work performance or conduct problems. However [appellant] failed to meet the [employing establishment] requirement for attendance....

"[Appellant] was issued a letter of warning for failure to be regular in attendance on May 20, 2008. She was issued a seven[-]day suspension on February 14, 2009 for failure to be regular in attendance. On April 16, 2009 [appellant] was issued a 14[-]day suspension for failure to be regular in attendance."

By decision dated August 14, 2009, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

On August 30, 2009 appellant requested a review of the written record.

In a letter dated September 2, 2009, appellant indicated that she should be granted compensation in light of the employing establishment's subsequent approval of her LWOP request for the period in question. She also suggested that her leave request was improperly reviewed by an acting supervisor, who was supposed to complete a review of the request within 24 hours.

In settlement agreement dated August 24, 2009, received by the Office on November 2, 2009, the employing establishment approved appellant's request for LWOP from May 28 to August 17, 2009. It stated in the agreement, however, that it had approved the request solely in an effort to resolve her allegations and that its approval should not be construed as an admission of discrimination or wrongdoing on the part of any management official.

The employing establishment submitted an October 28, 2009 letter which reiterated that it was controverting appellant's claim for compensation based on an emotional condition. In addition, with regard to the assertions she made regarding an acting supervisor completing her accident report, and the time frame for completing her report, the employing establishment asserted that any employee in an acting supervisory position retained the responsibility to complete such reports.

By decision dated January 12, 2010, an Office hearing representative affirmed the denial of appellant's claim for an emotional condition.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable

employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

### ANALYSIS

Appellant has not alleged that performance of her regular or specially assigned duties led to her emotional condition. Rather she alleges that the initial denial of her leave request caused additional stress. The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>5</sup>

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>6</sup> In the present case, there is no evidence of record to substantiate appellant's allegations that management acted unreasonably or abusively in initially denying her request for leave from May 18 to June 22, 2009. The fact that personnel actions were modified, rescinded or dismissed does not, in and of itself, establish error or abuse.<sup>7</sup> The August 14, 2009 settlement agreement was reached without an admission of guilt or fault by the parties involved. Thus, appellant has not established a compensable employment factor under the Act in this respect.

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>6</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>7</sup> See *Sherry L. McFall*, 51 ECAB 436 (2000); *Garry M. Carlo*, 47 ECAB 299 (1996).

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>8</sup> Regarding appellant's allegations that the employing establishment mishandled her request for leave by allowing an acting supervisor to review the request, and that the acting supervisor took an excessive amount of time to complete a report, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of such claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>9</sup> In addition, appellant has failed to substantiate or provide corroboration for these allegations. She has failed to show that these alleged actions demonstrated error or abuse on the part of the employing establishment; thus, they are not compensable.

The Board further finds that appellant has failed to establish that management engaged in a pattern of harassment. Appellant has not submitted any factual evidence to support her allegations that she was harassed, mistreated or treated in a discriminatory manner by her supervisors. She has alleged in general terms that management's refusal to initially grant her leave request and consider her physician's recommendations and its perceived delay in processing her claim constituted a form of harassment, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the incidents which she believed constituted harassment and discrimination. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with certain superiors at work which do not support her claim for an emotional disability.<sup>10</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that the employing establishment engaged in a pattern of harassment and intimidation toward her or created a hostile workplace environment.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.<sup>11</sup> The Board finds that the Office properly denied compensation for an alleged emotional condition in its August 14, 2009 and January 12, 2010 decisions.

### **CONCLUSION**

The Board finds that the Office of Workers' Compensation Programs properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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<sup>8</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>9</sup> See *George R. Ross*, 43 ECAB 346 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>10</sup> See *Curtis Hall*, 45 ECAB 316 (1994); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>11</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 3, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board